



Paper No. 5

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OCT 28 2002

OFFICE OF PETITIONS

In re Application of
Robert J. Fitzsimmons
Application No. 10/080,642
Filed: February 22, 2002
Attorney Docket No. 090928.A170
Title: STIMULATING CELL RECEPTOR
ACTIVITY USING ELECTROMAGNETIC
FIELDS

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: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)
:
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This is in response to the petition under 37 CFR 1.47(b), filed May 24, 2002.

The petition under 37 CFR 1.47(b) is GRANTED.

The above-identified application was filed on February 22, 2002. On March 18, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring, *inter alia*, an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition (and fee) and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a one month extension of time.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that all of the inventors cannot be reached or refuse to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage; (4) the petition fee; (4) a statement of the last known address of the non-signing inventor; and (5) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application.

Accompanying the petition was, *inter alia*, a copy of a cover letter from Oaks to Fitzsimmons dated April 18, 2002, transmitting the application papers. According to Oaks, as of the date of the petition, no response from Fitzsimmons has been received.

The petition and the declaration filed on May 24, 2002 have been reviewed and found to be in compliance with 37 CFR 1.47(b).

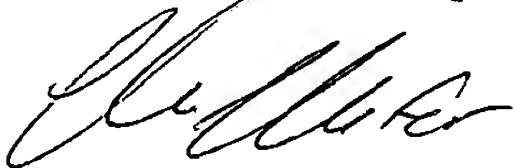
This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Receipt of the substitute drawings submitted with the petition is acknowledged.

The application file is being forwarded to Technology Center 1600 for examination.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



UNITED STATES PATENT AND TRADEMARK OFFICE

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LETTER

Dear Mr. Fitzsimmons:

You are named as the inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as the inventor.

As the named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, agent of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (703) 305-0272. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Beverly M. Flanagan
Supervisory Petitions Examiner
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Office of the Deputy Commissioner
for Patent Examination Policy

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